

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

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LUIS ALMONTE, individually and as
Administrator of the Estate of Marcelo
Lucero a/k/a Oswaldo Lucero,

Plaintiffs,

--against--

MEMORANDUM AND ORDER

10-CV-5398
(LDW)

SUFFOLK COUNTY,
SUFFOLK COUNTY POLICE
DEPARTMENT, TOWN OF
BROOKHAVEN,
TOWN OF BROOKHAVEN
DEPARTMENT OF
PUBLIC SAFETY,
VILLAGE OF PATCHOGUE,
VILLAGE OF PATCHOGUE OFFICE OF
PUBLIC SAFETY AND CODE
ENFORCEMENT, UNKNOWN POLICE
OFFICERS 1-10

Defendants.

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APPEARANCES:

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LONG ISLAND OFFICE

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Attorneys for Defendants Village of Patchogue and

Village of Patchogue Office of Public Safety and Code Enforcement

WEXLER, District Judge:

Plaintiff Luis Almonte commenced this action both individually and in his capacity as the Administrator of the estate of Marcelo Lucero a/k/a Oswaldo Lucero. Plaintiff asserts a civil rights claim pursuant to 42 U.S.C. §1983, and state law claims of negligence. Originally named as Defendants herein were: (1) the County of Suffolk, (2) the Suffolk County Police Department (collectively “County Defendants”), (3) the Town of Brookhaven, (4) the Town of Brookhaven Department of Public Safety (collectively the “Town Defendants”), (5) the Village of Patchogue, and (6) the Patchogue Office of Public Safety and Code Enforcement (collectively the “Village Defendants”). The only individual Defendants were unnamed “John Doe” defendants, referred to as “Unknown Police Officers 1-10.”

In a Memorandum and Order dated November 2, 2011, this court granted the motions of the Village and Town Defendants to dismiss the complaint. This court thereafter denied Plaintiffs’ motion to re-plead as against the Village Defendants, and directed that the parties inform the court as to the status of this matter with respect to the only defendants remaining

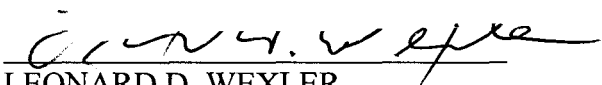
herein – the County Defendants.

In response to this court's inquiry, Plaintiff asserted that the County Defendants were properly served, and of his intention to serve an amended complaint. The County Defendants took the position that they were never properly served, and that therefore any amended complaint would serve as the initial complaint herein. Counsel's correspondence made clear to the court that a traverse hearing was necessary to determine the issue of propriety of service on the County Defendants.

On January 26, 2012, upon consent of the parties and the assigned Magistrate Judge, a traverse hearing was held before the Honorable Gary R. Brown, United States Magistrate Judge. In a Report and Recommendation dated May 16, 2012 (the "R&R"), Magistrate Judge Brown held that Plaintiff did not effectuate proper service over the County Defendants.

The R&R makes clear that any objections thereto were required to be filed with the Clerk of the Court within fourteen days. As noted, the R&R is dated May 16, 2012, and was filed on the Court's ECF system as of that date. The time to file objections having passed without receipt of objections, the R&R is hereby adopted. In view of the fact that the R&R holds that the county Defendants were never properly served, no Defendants remain herein. Accordingly, the Clerk of the Court is directed to close the file in this matter.

SO ORDERED.


LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
June 11, 2012